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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| EXAMINER |
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SHAFFER, RICHARD R

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| ART UNIT | PAPER NUMBER |
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3733

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,432

Applicant(s)

LINK ET AL.

Examiner

Richard R. Shaffer

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/9/05; 5/19/05; 1/10/06; 3/13/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because they poorly demonstrate the invention, have hand drawn portions, broken lines, among much more. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 13 is objected to because the written specification and drawings do not support such a device with two drill gauges for the second embodiment shown in Figures 6-14 which the preceding claims are directed towards.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9-18, 20, 22, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Michelson (US Patent 6,159,214). Michelson discloses a system comprising:

[First Interpretation] a guide device (700) has a moveable opening for guiding a tool; an adjustment instrument having a rod (152), a wedge shaped intervertebral plate (154) having a surface area less than the surface area of an intervertebral space, and an intermediate adjustment portion (758); the adjustment portion (758) is displaceable along the rod (152) with the use of the grooves (156); the moveable opening of the guide device (700) is larger than the intervertebral plate (154); and the tip of the plate (154), the shoulder of plate that juts out from the rod (152), and bores (155, 714, 720a-b, and 721a-d) can all act as x-ray markers.

[Second Interpretation] a guide device (700) has a moveable opening for guiding a tool; an adjustment instrument having a rod (152, 758) and a wedge shaped intervertebral plate (154) having a surface area less than the surface area of an intervertebral space; the guide device can be pushed onto a free end of the adjustment rod (152, 758) with engagement features (737a and 723a) creating a non-rotational fit; the drill guide further has four drill gauges (721a-d) with two pairs offset by 180 degrees; the guide device (700) could be rotated by 180 degrees while maintaining functionality; the shoulder of plate that juts out from the rod (152), and bores (155, 714, 720a-b, and 721a-d) can all act as x-ray markers.

[Third Interpretation] a guide device (1110) has a moveable opening for guiding a tool; an adjustment instrument having a rod (152) and a wedge shaped intervertebral

Art Unit: 3733

plate (154) having a surface area less than the surface area of an intervertebral space; the guide device (1110) defines at least guide holes (1130, 1132, as well as unlabeled portions) to receive pins (1228a-b like shown in Figure 68); and a spreader (1100) that can hold maintain the pins parallel to one another.

The method Michelson disclosed can be found in Column 5, Line 19 through Column 6, Line 36.

In regard to claim 20, **Column 16, Lines 16-21 and Column 22, Lines 1-4** describe that rasps in a variety of shapes and lengths are anticipated in combination with the device disclosed.

In regard to claim 22, the distraction forceps to hold the pins parallel can be interpreted as being the engagement features of 737a from the second interpretation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Michelson in view of Jacobson (US Patent 4,545,374).

Michelson discloses all of the claimed limitations except is silent as to whether x-ray monitoring is used while introducing the intervertebral plate. Jacobson teaches (**Column 2, Lines 46-49**) that using fluoroscopic x-ray, it insures proper placement and maneuvering of instruments. It would have been obvious to one having ordinary skill in

Art Unit: 3733

the art at the time the invention was made to perform the method of Michelson under x-ray monitoring to minimize possible surgical error in placement and movement of instruments.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard R. Shaffer whose telephone number is 571-272-8683. The examiner can normally be reached on Monday-Friday (7am-5pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Richard Shaffer
August 30th, 2006



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER